Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-24–08 OF 2019(J)
ZAWAWI SALLEH, HASNAH HASHIM AND MARY LIM FCJJ
20 MAY 2021

Land Law — Acquisition of land — Compensation — Landowner dissatisfied with compensation awarded by High Court for acquisition of its land appealed to Court of Appeal ('COA') on ten 'questions of law' — Whether 'questions of law' were in fact complaints on issues of fact decided, and principles of valuation applied, by High Court in computing amount of compensation — Whether appeal on such matters which ultimately questioned adequacy of the amount of compensation awarded by the High Court were barred by the proviso to s 49(1) of Land Acquisition Act 1960 — Whether COA should not have regarded matters raised by landowner in its appeal as questions of law and entertained the appeal

The High Court, sitting with assessors, had increased the compensation awarded by the land administrator to the respondent ('Nusantara') following the compulsory acquisition of its land for a public purpose. In the land reference proceedings, both the appellant ('the PTD') and Nusantara had each referred the court to four comparable sale transactions to determine the fair market value of the acquired land. The court found that only one comparable ('Comparable No 1'), submitted by the PTD, was the most appropriate one and increased the market value of the land after making various adjustments and deductions for matters like location, size, access and layer of the land when compared with Comparable No 1. Dissatisfied with the decision, Nusantara appealed to the Court of Appeal ('COA') on ten 'questions of law' which eventually boiled down into three main issues, namely, that the High Court had erred in: (a) making a 10% deduction to the market value because the larger size of the acquired land would not have attracted many potential buyers; (ib) 'double counting' by making separate deductions for location, access and layer of the land when all those three factors should have been treated as one factor; and (c) failing to consider the potential development value of the acquired land since planning permission had been granted for it. The COA agreed that the three issues raised were questions of law not prohibited by the proviso to s 49(1) of the Land Acquisition Act 1960 ('the LAA') from being the subject of an appeal following the decision of the Federal Court in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 (*Semenyih Jaya*). That case decided that although the proviso to s 49(1) barred an appeal to the COA and Federal Court against the decision of the High Court on an award of compensation, an appeal could still be maintained on 'questions of law' as the said proviso only barred appeals against

A 'issues of fact on the ground of quantum of compensation'. The COA allowed Nusantara's appeal and adjusted the High Court's award thereby resulting in the compensation award being increased further. The COA rejected the PTD's submission that the 'questions of law' raised by Nusantara were actually factual questions affecting the quantum of compensation and that therefore the entire B appeal was barred by the proviso to s 49(1) of the LAA. In the instant appeal, the PTD prayed for the COA's decision to be set aside on the aforesaid ground.

Held, unanimously allowing the appeal, setting aside the COA's decision and reinstating the decision of the High Court:

C (1) Nusantara's appeal at the Court of Appeal ('COA') was undeniably an appeal on compensation. None of the questions posed by Nusantara before the COA were real questions of law, hence they ought not to have been allowed by the COA (see paras 77, 111 & 105).

D (2) Whether the ten questions were taken as posed or as grouped into the 'three issues', the questions or issues were all about the award of compensation made by the High Court, how the final amount was arrived at and how that amount was wrong. None of the questions posed E was, in any sense, and certainly not in the limited sense of *Semenyih Jaya*, questions of law. The complaints concerned issues of fact and/or the High Court's application of valuation principles in computing the compensation and ultimately related to the inadequacy of the compensation by reason of the deductions/adjustments that were made F by the High Court — an exercise the court was perfectly entitled to undertake to determine the market value of the acquired land in accordance with the principles provided in para 1(1A) of the First Schedule of the LAA. The High Court was entitled to make those deductions for the reasons stated as those deductions were very much G fact-based decisions, based on evidence adduced and the analysis of such evidence involving the court's appreciation and impression of such evidence when applying principles of valuation to the facts. Room had to be given for a divergence of opinion on the evaluation of such evidence, more so when the appeal was statutorily limited (see paras 79–80 & H 82–84).

(3) The circumstances and meaning of what might amount to a 'question of law' under the proviso to s 49(1) had to be narrowly and strictly construed; the phrase 'question of law' could not be given a wide, extensive or flexible construct as that would undermine the clear intent of I the said proviso, ie, that there was no right of appeal in respect of decisions comprising an award on compensation. The proviso to s 49(1) did not affect the right to appeal on matters other than compensation or the amount of compensation such as the measurement of the acquired land, persons to whom the compensation was payable, the

apportionment of the compensation or on matters referred by the land administrator under s 36(2) of the LAA (see paras 57–58 & 67).

(4) Contrary to the COA's view, the High Court did not require expert evidence before it made the necessary adjustments to Comparable No 1 on account of the comparatively larger size of the acquired land. Like locality and other characteristics, the size of the acquired land was a relevant consideration and the only issue was whether the comparable market price should be increased or reduced. Such adjustment was ultimately a matter of valuation principle and the High Court, assisted by the assessors who were licensed valuers, were entitled to make the 10% deduction to Comparable No 1 in order to reach an award of adequate compensation. The appellate court had to accommodate a divergence of opinion on the degree or percentage of adjustment, which was a normal occurrence in any determination of compensation (see paras 90–91).

(5) Nusantara's argument that location, access and layer were one and the same, constituting 'three sides of the same pyramid', and that the separate deductions that were made for each of those items by the High Court amounted to 'double counting' was not a question of law but an application of valuation principles to the facts. Location, access and layer were different concepts and, depending on the factual circumstances, they might be treated separately or together; and in either case, it was not erroneous as it was subject to the findings of fact, how the factors were treated and the degree of deduction (see paras 106–107).

(6) As for the complaint concerning the development potential of the acquired land, the High Court concluded that no adjustment needed to be made for this factor because the potential development value had already been factored into the transacted value of Comparable No 1. This issue was not a question of law either; at worst, it might be a wrong appreciation of the evidence. The evidence, however, showed that the development order, upon which the development potential of the land was asserted, had lapsed, in which case, the issue became irrelevant (see para 109).

Obiter dicta:

(1) Although the whole of s 40D of the LAA was declared unconstitutional and was invalidated in *Semenyih Jaya* in 2017, it still remained in the statute books and had not been deleted so as to avoid confusion, lest it was accidentally applied. This exercise ought to have been undertaken by the relevant agencies, ministries or the Attorney General's Chambers and this court urged urgent action in this regard (see para 71).

[Bahasa Malaysia summary

Mahkamah Tinggi, berserta dengan penaksir, telah meningkatkan jumlah pampasan yang telah di awardkan oleh pentadbir tanah kepada responden

A ('Nusantara') selepas pengambilan wajib tanahnya untuk satu tujuan awam. Dalam prosiding rujukan tanah ini, perayu ('PTD') dan Nusantara telah masing-masing merujuk ke mahkamah empat transaksi penjualan yang boleh dibandingkan untuk menentukan harga pasaran adil tanah yang diambil. Mahkamah mendapati hanya satu perbandingan (perbandingan No 1) yang B diserahkan oleh PTD, adalah yang paling sesuai dan menaikkan jummlah pasaran tanah selepas membuat beberapa pengubahsuaian dan tolakkan untuk perkara seperti lokasi, saiz, akses dan lapisan tanah selepas dibandingkan dengan perbandingan No 1. Tidak berpuas hati dengan keputusan tersebut, Nusantara merayu kepada Mahkamah Rayuan (MR) sepuluh persoalan C undang-undang yang sebenarnya merupakan tiga isu utama ianity mahkamah tinggi telah terkhilaf dalam: (a) membuat tolakkan 10% kepada harga pasaran kerana saiz yang lebih besar tanah yang diambil tidak akan menarik pembeli; (b) pengiraan dua kali dengan membuat tolakkan berasingan untuk lokasi, akses dan lapisan tanah apabila ketiga-tiga faktor ini sepatutnya diambil D sebagai satu faktor; dan (c) gagal untuk menimbangkan nilai potensi pembangunan tanah yang diambil memandangkan izin untuk membuat pelan telah diberikan untuknya. MR bersetuju bahwa tiga isu yang dibangkitkan adalah soalan perundangan dan tidak dihalang oleh peruntukan s 49(1) Akta Pengambilan Tanah 1960 ('Akta') dari menjadi halperkara rayuan menurut E keputusan Mahkamah Persekutuan dalam *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 (*Semenyih Jaya*). Kes tersebut memutuskan bahawa walaupun peruntukan s 49(1) menghalang rayuan ke MR dan Mahkamah Persekutuan terhadap keputusan Mahkamah Tinggi berkaitan dengan satu awad pampasan, satu rayuan masih F boleh dibuat atas persoalan undang-undang kerana peruntukan tersebut hanya menghalang rayuan terhadap isu fakta atas sebab kuantum pampasan dan oleh yang demikian seluruh rayuan adalah dihalang oleh peruntukan s 49(1) Akta. Dalam rayuan ini, PTD memohon agar keputusan MR diketepikan atas sebab yang dinyatakan di atas.

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Diputuskan, membenarkan rayuan dan menolah keputusan MR dan mengekalkan keputusan Mahkamah Tinggi:

(1) Rayuan Nusantara di Mahkamah Rayuan ('MR') tidak boleh dinafikan H merupakan satu rayuan atas pampasan. Tiada persoalan yang dikemukakan oleh Nusantara di hadapan Mahkamah Rayuan merupakan persoalan undang-undang, oleh yang demikian, ianya tidak sepatutnya dibenarkan oleh MR (lihat perenggan 77, 105 & 111).

(2) Sama ada sepuluh persoalan sepatutnya diambil sepertimana ianya I dibuat atau dikumpulkan kepada tiga isu, persoalan atau isu semuanya berkaitan dengan awad pampasan yang dibuat oleh Mahkamah Tinggi, bagaimana ianya tiba di jumlah akhir dan bagaimana amaun tersebut adalah salah. Tiada satu soalan yang dikemukakan adalah, dalam apa cara sekalipun, dan tentunya tidak dalam bentuk terhad seperti *Semenyih*

Jaya, soalan undang-undang. Aduan berkaitan isu fakta dan/atau pemakaian mahkamahj tinggi prinsip penilaian ddalam menigari pampasan dan secara akhirnya berkaitan dengan kekurrangan pampasan dengan sebab penolakkan/pengubahan yang dibuat oleh mahkamah tinggi – satu perkara yang dilakukan oleh mahkamah yang mana ianya berhak untuk berbuat dan menentukan harga pasaran berkaitan dengan prinsip yang diperuntukkan dalam perenggan 1(1A) Jadual Pertama Akta. Mahkamah Tinggi berhak untuk membuat penolakkan tersebut atas alasan yang dinyatakan dan penolakkan tersebut adalah keputusan berdasarkan fakta, berdasarkan keterangan yang dikemukakan dan analisan keterangan sedemikian yang melibatkan penailaian mahkamah dan kesan keterangan sedemikian apabila menggunakan prinsip penilaian kepada fakta. Ruang perlu diberikan untuk pembezaan pandangan berkaitan dengan penilaian keterangan sedemikian, terutama apabila rayuan adalah dihadkan secara statutori (lihat perenggan 79–80 & 82–84).

(3) Keadaan dan maksud apa yang mungkin terjumlah sebagai persoalan undang-undang di bawah peruntukan s 49(1) perlu ditafsir secara sempit dan ketat, frasa soalan undang-undang tidak boleh diberikan penafisiran luas, besar atau flexible kerana ianya akan menjejaskan tujuan jelas peruntukan tersebut, iaitu, bahawa tiada hak untuk merayu berkaitan dengan keputusan yang melibatkan awad pampasan. Peruntukan kepada s 49(1) tidak memberikan kesan kepada hak untuk merayu atas perkara selain daripada pampasan atau jumlah pampasan seperti ukuran tanah yang diambil, orang yang mana pampasan tersebut perlu dibayar kepada, pembahagian pampasan atau atas perkara yang dirujuk oleh pentadbir tanah di bawah s 36(2) Akta (lihat perenggan 57–58 & 67).

(4) Bertentangan dengan pandangan MR, Mahkamah Tinggi tidak memerlukan keterangan saksi pakar sebelum ianya membuat pengubahan yang sesuai kepada perbandingan No 1 atas sebab saiz yang lebih besar apabila dibandingkan dengan tanah yang diambil. Seperti lokaliti dan sifat yang lain, saiz tanah yang diambil merupakan satu perkara yang relevan untuk dipertimbangkan dan satu satunya isu adalah sama ada harga pasaran yang dibandingkan perlu dinaikkan atau dikurangkan. Pengubahan sedemikian adalah prinsip penilaian Mahkamah Tinggi, yang dibantu oleh penilai yang merupakan penilai berlesen, berhak untuk membuat penolakkan 10% kepada perbandingan No 1 untuk mencapai award pampasan yang memadai. Mahkamah Rayuan perlu memberi ruang untuk perbezaan pandangan kepada peratus pengubahan, yang merupakan satu perkara yang biasa dalam apa-apa penentuan pampasan (lihat perenggan 90–91).

(5) Hujahan Nusantara bahawa lokasi, akses, dan lapisan merupakan perkara yang sama, yang merupakan tiga bahagian piramid yang sama, dan

bahawa penolakkan yang berbeza yang dibuat untuk setiap perkara ini terjumlah kepada pengiraan dua kali bukanlah satu persoalan undang-undang akan tetapi pemakaian prinsip penilaian kepada fakta. Lokasi, akses dan lapisan merupakan konsep berbeza dan, berbandingan dengan fakta keadaan, mereka mungkin boleh dianggap sebagai berbeza atau bersama; dan dalam apa keadaan sekalipun, ianya tidaklah merupakan kekhilafan kerana ianya tertakluk kepada dapatan fakta, dan bagaimana faktor tersebut dilayan dan tahap penolakkan (lihat perenggan 106–107).

(6) Berkaitan dengan aduan berkaitan dengan potensi pembangunan tanah yang diperoleh, mahkamah tinggi membuat kesumpulan bahawa tiada pengubahan perlu dilakukan berkaitan dengan faktor ini kerana nilai potensi pembangunan telahpun diambilkira kepada nilai transaksi perbandingan No 1. Isu ni juga bukan merupakan satu persoalan undang-undang, dan di tahap paling teruk sekalipun, ianya mungkin merupakan penelitian salah keterangan. Keterangan menunjukan bahawa perintah pembangunan, yang mana potensi pembangunan tanah tersebut dikatakan, telahpun luput dan dalam kes tersebut, isu ini tidak lagi relevan (lihat perenggan 109).

Obiter dicta:

(1) Walaupun keseluruhan s 40D Akta telah diisytiharkan tidak berperlembagaan dan telah pun dijadikan tidak sah dalam *Semenyih Jaya* masih terdapat pada tahun 2017, ianya masih kekal di dalam buku statut dan belum lagi dipadamkan untuk mengelakkan kekeliruan, sekiranya ianya diguna pakai secara tidak sengaja. Perkara ini perlu dijalankan oleh agensi, kementerian yang berkaitan atau Jabatan Peguam Negara dan mahkamah ini memohon agar tindakan segera di ambil (lihat perenggan 71).]

Cases referred to

Afeef Abdulqader Mansoor v Pentadbir Tanah WPKL [2019] 12 MLJ 125; [2020] 1 CLJ 665, CA (refd)

Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat [2021] 4 MLJ 1; [2021] 3 CLJ 1, FC (folld)

Amitabha Guha (sebagai wasi bagi harta pusaka Madhabendra Mohan Guha) & Another v Pentadbir Tanah Daerah Hulu Langat (Reference No 06–3–05 of 2013 (unreported), HC (refd)

Ashbridge Investments Ltd v Minister of Housing and Local Government [1965] 1 WLR 1320, CA (refd)

Batu Kawan Bhd v Pentadbir Tanah Daerah Seberang Perai Selatan [1998] 3 MLJ 205, CA (refd)

Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue Province Wellesley [1984] 1 MLJ 164, FC (refd)

Calamas Sdn Bhd v Pentadbir Tanah Batang Padang [2018] Supp MLJ 256; [2011] 5 CLJ 125, FC (refd)
Collector of Land Revenue v Alagappa Chettiar [1971] 1 MLJ 43, PC (refd)
Halaman Perdana Sdn Bhd v Pentadbir Tanah Daerah Hulu Selangor [2016] 2 MLJ 252, CA (refd)
Hartawan Development Sdn Bhd v Pentadbir Tanah Daerah Melaka [2017] 6 MLJ 386; [2017] 2 CLJ 536, CA (refd)
JW Properties Sdn Bhd v Pentadbir Tanah Kuala Selangor [2020] MLJU 920, CA (refd)
Kelana Megah Development Sdn Bhd v Pentadbir Tanah Daerah, Kota Tinggi & Satu Lagi [2019] 1 MLJ 723, CA (refd)
Kembang Masyur Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan [2019] 5 MLJ 473; [2019] 1 LNS 798, CA (refd)
Kenny Heights Devlopment Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur & Anor [2011] 2 CLJ 912, HC (refd)
Nanyang Manufacturing Co v The Collector of Land Revenue, Johore [1954] 1 MLJ 69 (refd)
Ng Chin Chai v Pentadbir Tanah Segamat & Other Appeals [2016] MLJU 1702; [2016] 4 CLJ 693, CA (refd)
Ng Tiou Hong v Collector of Land Revenue, Gombak [1984] 2 MLJ 35, FC (refd)
UKM v Attorney General [2018] SGHCF 18, HC (refd)
Pentadbir Tanah Daerah Kota Tinggi v Siti Zakiyah bte Sh Abu Bakar & Ors [2006] 2 MLJ 426, FC (refd)
Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561; [2017] 5 CLJ 526, FC (refd)
Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd [1966] 1 MLJ 243, FC (refd)
Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perak and Another Appeal [2013] 6 MLJ 626, FC (refd)
Teguh Kemajuan Sdn Bhd v Pentadbir Tanah, Daerah Kota Tinggi (Perbadanan Setiausaha Kerajaan Johor (SSI), intervener) [2018] MLJU 345; [2018] 1 LNS 376, HC (distd)
Yong Nyat Ngo v Superintendent of Lands and Surveys Kuching [2008] MLJU 276, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 96, 96(a)
Federal Constitution arts 13, 13(2), 121, 121(1), (1B)
Land Acquisition Act 1960 ss 12, 14, 36, 36(1), 36(2)(a), (2)(b), (2)(c), (2)(d), (2)(e), (2)(f), 37, 37(1)(a), (1)(b), (1)(c), (1)(d), 38(1), 40A, 40C, 40D, 40D(1), (2), (3), 47, 47(1), (2), 48, 49, 49(1), 51(1)(b), First Schedule, para 1(1A), 2, Third Schedule

Appeal from: Civil Appeal No J-01(A)-553–09 of 2018 (Court of Appeal, Putrajaya)

Khoo Guan Huat (Madihah bt Zainol, Vijay Raj and Tan Hui Wen with him) (Johor State Legal Advisor's Office) for the appellant.

Gopal Sri Ram (Clarence Edwin, Margaret Tan Hui Ling, R Paramananda, How Lee Ming and Marcus Lee with him) (Clarence Edwin Law Office) for the respondent.

Mary Lim FCJ (delivering judgment of the court):

[1] This appeal brings to sharp focus, once again, the meaning, intent and ambit of s 49 of the Land Acquisition Act 1960 (Act 486), in particular the proviso to s 49(1), whether the appeal to the Court of Appeal and thence to this court, is barred by reason of the proviso. This issue was raised as a threshold issue at the Court of Appeal which went on to rule in the negative before deciding the appeal on its merits. This threshold issue forms the core issue in this appeal.

FACTS

[2] The salient facts are gathered from the respective grounds of judgment of the High Court and Court of Appeal.

[3] According to the High Court, the respondent had invoked s 38(1) of the Land Acquisition Act 1960 (Act 486) after it found itself dissatisfied with the amount of compensation awarded by the land adminsitrator for the acquisition of its land known as Lot 46200 GRN 460222, Mukim Johor Bahru, Daerah Johor Bahru (scheduled land). The scheduled land measuring some 4,464 sqmt in area was acquired for the purpose of 'Pembinaan Loji Rawatan Air Kumbahan di Hulu Sungai Segget di Mukim Bandar Johor Bahru Daerah Johor Bahru untuk Jabatan Perdana Menteri di bawah perenggan 3(1)(a) Akta Pengambilan Tanah 1960'.

[4] The land adminsitrator had awarded a sum of RM16,516,800 as compensation for the acquisition. The respondent claimed that the fair market value of the scheduled land was RM28,830,074.40, that is, a rate of RM6,458.35 per sqmt. A private valuer's report was offered in support — see pp 84–121, record of appeal. The respondent had also claimed a loss of income of RM40,200 for loss of use of the scheduled land as a car park for 67 vehicles. In coming to his award, the land adminsitrator had relied on the recommendations of the government valuer who had offered four comparable sales in his valuation of the scheduled land (see valuation report at pp 122–174, record of appeal). After making the necessary adjustments to account for differences between the scheduled land and the comparable sales, the

government valuer had recommended a market value of RM3,700 per sqmt. The land adminsitrator rejected the respondent's claim for loss of income.

[5] On 9 August 2018, assisted by assessors, the High Court increased the amount of compensation from RM16,516,800 to RM19,026,907 after being satisfied that this represented the fair market value of the scheduled land. The respondent had relied on a valuation report prepared by a private valuer to justify its claim for increased compensation at the High Court. The private valuer had suggested four comparable sales in his valuation report. Each comparable was assessed and rejected by the High Court and the reasons for the rejection are set out at paras [6]–[23] of the grounds of decision.

[6] The appellant also offered four comparables through the government valuer. The learned judge and the assessors agreed that the best comparable was Comparable No 1 but rejected Comparable Nos 2, 3 and 4. Reasons for this decision were also given — see paras [16]–[23]. After making adjustments, the High Court, as the Land Reference Court, increased the market value of the scheduled land to RM19,026,907, that is, a further amount of RM2,510,107 as compensation for the acquisition of the scheduled land together with interest. Those adjustments involved a total deduction of 30%: 5% for location, 10% for access, 5% for layer and 10% for size.

[7] The learned judge tabulated his reasons for the decision:

Factors to be considered	Base value for comparison RM5,799.44 m2	Remarks
Time	+ 5%	The date of valuation for the scheduled land was later, therefore, an increase of 5% of the base value was allocated. This court is of the considered view that an increase of 5% was justifiable since not many transactions were recorded within the period between 2016 and 2017.
Adjusted value	RM6,089	
Other considerations:		

Location	-5%	As explained above, the location of the scheduled land is situated next the water treatment plant which is a negative factor in terms of location. Although it is a closed and covered water treatment plant, that itself would not negate the fact that it would bring negative impact for any potential buyers.
Access	-10%	There are dual frontage for the JPPH's Comparable No 1, ie Jalan Mohd Taib and Jalan Tebrau. The scheduled land has only one lane access road as explained above.
Layer	-5%	The scheduled land is situated at a second layer from Jalan Tun Razak which brings a negative factor compared with the comparable.
Size	-10%	The scheduled land is five times larger in size compared with the comparable. The bigger the land size, the lesser the number of potential buyers. Thus, a negative factor is to be considered.
Other considerations are irrelevant or no adjustment because of similar characteristics with the comparable		
Total	-30%	
The adjusted value at the rate of	RM4,262.30 m2 / RM395.97 ft2	

[8] The High Court decided not to make any adjustments to increase the value for potentialities development taking the opinion that this had already been taken into consideration in arriving at the value of RM5,799.44 per m2 — see para [23].

[9] The respondent was still dissatisfied with this amount of compensation. And, so it appealed.

PROCEEDINGS BEFORE THE COURT OF APPEAL

[10] At the Court of Appeal, the appellant raised the issue 'relating to whether the appeal is limited to issues of fact on ground of quantum of compensation'. It was the submission of the appellant that the appeal was barred by reason of s 49 of Act 486 as the three main points or issues relied on by the respondent, namely the 10% deduction to market value; double counting and potential development value of scheduled land related to questions of fact and the appeal in essence, was to increase the amount of compensation. Such an appeal was barred under the proviso to s 49.

[11] The respondent contended otherwise, submitting that the appeal was 'premised on the ground that there was no evidence upon which the High Court properly directing itself could reach that conclusion of fact. As such, that decision may itself for that reason be wrong in point of law and thus susceptible to an appeal'. The respondent contended that in each of the three respects, 'there was no evidence on which a High Court properly directing itself could reach that conclusion of fact. As such, that decision may itself be wrong in point of law and thus susceptible to an appeals.

[12] The Court of Appeal agreed with the respondent, holding that all three points raised were questions of law which, following the decision of this court in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; [2017] 5 CLJ 526 ('Semenyih Jaya'), were not prohibited by the proviso to s 49(1).

[13] The Court of Appeal then proceeded to allow the appeal and made the following orders:

(a) 'set aside the orders of the High Court relating to 10% deduction for size';

(b) 'substituted the High Court's deductions for location, access and layer with a single deduction of 10% for all 3 factors' (instead of the separate deductions of 5% for 'location', a further 10% for 'access' and another deduction of 5% for 'layer', totaling 20%); and

(c) '... allowed potentialities for development of 25%'.

In other words, the Court of Appeal increased the amount of compensation earlier awarded by the High Court from RM19,026,907 by a net of 15% [+25%–10%].

A OUR ANALYSIS AND DECISION

[14] The central complaint in this appeal is that the respondent's appeal at the Court of Appeal was an incompetent appeal as it was barred by the proviso to s 49(1) of Act 486. The proviso to s 49(1) prohibits appeals against decisions B of the High Court on compensation. The appellant's contention is that the Court of Appeal erred in deciding otherwise and in holding that the appeal concerned questions of law, as permitted by the Federal Court's decision in *Semenyih Jaya.*

C **[15]** Learned counsel for the appellant further contended that the respondent's appeal was a 'masked attempt' to circumvent the bar stipulated in the proviso to s 49(1) of Act 486; that the objections at the Court of Appeal were solely on the inadequacy of the amount of compensation awarded, and this is reflected in the memorandum of appeal filed by the respondent at the D Court of Appeal.

[16] Learned counsel added that all the issues raised at the Court of Appeal were issues of fact and/or issues involving the application of valuation E principles that were not questions of law, and for which the High Court judge, aided by assessors, was suited to resolve.

[17] In response, the respondent citing *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2018] Supp MLJ 256; [2011] 5 CLJ 125, contended that the F appellant's appeal itself infringes s 49(1) as it is an appeal 'wholly against an award of compensation' — see para 2 of written submissions. Having said that, the respondent nevertheless maintained that its appeal before the Court of Appeal involved questions of law as the High Court had 'acted in several instances sans evidence or upon a view of the facts which could not be G reasonably entertained, and this rendered the decision of the High Court susceptible to appeal on a question of law'.

[18] Both parties then amplified on the deductions made by the High Court in computing the market value of the scheduled land, whether such deductions H were erroneous or otherwise, resulting in the decision of the Court of Appeal.

[19] Prior to this court's decision in *Semenyih Jaya,* the law on the operation and application of the proviso to s 49(1) of Act 486 was understood to be well-settled. Section 49 provides for a limited right of appeal in land references. I A decision of the High Court may be appealed against to the Court of Appeal and thence to the Federal Court, provided it is not an appeal 'where the decision comprises an award of compensation'.

[20] Section 49 reads as follows:

49 *Appeal from decision as to compensation.*

(1) Any person interested, including the land adminsitrator and any person or corporation on whose behalf the proceedings were instituted may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:

Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

(2) Every appeal under this section shall be presented within the time and in the manner provided for appeals in suits in the High Court:

Provided that the time within which an appeal may be presented shall only be capable of enlargement by order of a Court in such special circumstances as the Court may think fit.

(3) *(Omitted).* (Emphasis added.)

[21] In a series of decisions starting with this court's decision in *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* ('Calamas'), it was held in no uncertain terms that there is no right of appeal against an award of compensation issued by the trial judge.

[22] This approach in *Calamas* was consistently followed by the Court of Appeal in *Ng Chin Chai v Pentadbir Tanah Segamat & Other Appeals* [2016] MLJU 1702; [2016] 4 CLJ 693; *Halaman Perdana Sdn Bhd v Pentadbir Tanah Daerah Hulu Selangor* [2016] 2 MLJ 252; *Hartawan Development Sdn Bhd v Pentadbir Tanah Daerah Melaka* [2017] 6 MLJ 386; [2017] 2 CLJ 536; *Kembang Masyur Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan* [2019] 5 MLJ 473; [2019] 1 LNS 798; *JW Properties Sdn Bhd v Pentadbir Tanah Kuala Selangor* [2020] MLJU 920; *Afeef Abdulqader Mansoor v Pentadbir Tanah WPKL* [2019] 12 MLJ 125; [2020] 1 CLJ 665, to name a few.

[23] The question thus is whether all this has since changed with the Federal Court's decision in *Semenyih Jaya.*

[24] It is perhaps, timely that these cases be examined a little closer and more carefully instead of citing *Semenyih Jaya* almost in vacuo, a very much in vogue phrase; as if that authority is the panacea for all that is wrong or perceived to be wrong, irregular or invalid.

Semenyih Jaya

[25] We start with *Semenyih Jaya.* It is often overlooked that this is actually a decision of this court on two cases: the first is *Semenyih Jaya* itself which referred six questions of law for determination after leave under s 96 of the Courts of Judicature Act 1964 (Act 91) had been granted on 7 October 2013 while the second case, *Amitabha Guha (sebagai wasi bagi harta pusaka*

A *Madhabendra Mohan Guha) & Another v Pentadbir Tanah Daerah Hulu Langat* Reference No 06–3–05 of 2013 (unreported) (*Amitabha Guha*) was a case where the parties, by consent, referred two constitutional questions to the Federal Court, from the Court of Appeal. The regularity and validity of this particular course of action appears to have escaped the attention of all
B concerned.

[26] The six questions of law framed in *Semenyih Jaya* were:

(a) whether there is a right of appeal to the Court of Appeal against a
C decision of the High Court (consisting of a judge and two assessors) involving compensation for land acquisition on a question of law in the light of s 40D(3) and the proviso to s 49 of the Land Acquisition Act 1960 ('the Act') as amended by Act A999?

D (b) whether the amendment to the Act by Amendment Act A999 which came into effect on 1 March 1998 would apply to land acquisitions instituted prior to the amendment with the effect of changing radically the hearing process as regards the role of the assessors and further limiting a vested right of appeal?

E (c) whether the amended s 40D(3) is constitutionally valid in providing for a conclusive determination by the assessors (as opposed to the judge) as to the amount of compensation in the face of art 121 of the Federal Constitution that contemplates that the judicial power of the courts should be exercised by judges only?

F (d) whether s 40D(3) could validly apply to limit appeals if the decisionmaking process provided for in s 40D(3) is constitutionally invalid?

(e) whether the limitation of appeals in s 40D(3) or the proviso to s 49
G could apply in the absence of strict compliance with the new procedure envisaged in s 40C and s 40D? and

(f) whether the safeguard of 'adequate compensation' in art 13(2) of the Federal Constitution is met where the land adminsitrator refuses to take
H into account of the development value or profit of the land acquired where the subject land at the time of acquisition is already being commercially developed for profit?

[27] The two constitutional questions consensually referred by the Court of
I Appeal in *Amitabha Guha* and which were part of the appeal in *Semenyih Jaya* were:

(a) whether s 40D(3) and the proviso to s 49(1) of the Land Acquisition Act 1960 are ultra vires art 121(1B) of the Federal Constitution particularly when read in the context of art 13 of the Federal Constitution; and

(b) whether s 40D(1) and (2) of the Land Acquisition Act 1960 are ultra vires art 121 of the Federal Constitution read in the context of art 13 of the Federal Constitution.

[28] Leaving aside the regularity of the reference questions, we note that the two constitutional questions framed are actually within the dictates of the six questions of law referred by *Semenyih Jaya* — see para [22] in grounds of decision. The Federal Court described these constitutional questions together with those raised in the questions of law as the 'constitutional issue' under Part A, the provisions limiting appeals under Act 486 as Part B, claim for loss of profit as Part C, and the application of the Amending Act A999 under Part D. The deliberations and the determination of the Federal Court were accordingly along those lines of categorisation and characterisation.

[29] The constitutionality issue in substance was of s 40D, whether the adjudicative function exercised by the assessors in a land reference contravened art 121(1) of the Federal Constitution. To this end, this court found '… s 40D of the Act to be ultra vires the Federal Constitution and that it should be struck down' — see paras [115] and [132]. After striking down s 40D (the whole provision and not just certain sub-s of 40D), the Federal Court most unusually proposed a new s 40D in the terms as seen at para [116], giving all its attendant reasonings.

[30] It is not the issue of constitutionality of s 40D or any other provision of Act 486 in *Semenyih Jaya* which is of relevance in this appeal. It is the decision on Part B, on the matter of 'bar to appeal'. Part B deals with the interpretation and construction of s 40D(3) read with s 49(1) and its proviso, and s 40C — whether in the light of these provisions, there is a right of appeal to the Court of Appeal against a decision of the High Court involving compensation for land acquisition on a question of law.

[31] Despite declaring s 40D as unconstitutional, the Federal Court in *Semenyih Jaya* held that it was only in relation to the decision-making process, 'no more no less', and the Federal Court proceeded to nevertheless refer to s 40D reasoning that 'its discussion is material in the context of the proviso to sub-s 49(1) of the Act. Subsection 40D(3) of the Act is a finality clause. It declares that any decision made by the Land Reference Court under s 40D ie, on the amount of compensation is 'final'. Consequently, a decision made under s 40D of the Act ends in the High Court. The law restricts appeals to be brought against the 'amount of compensation'.

[32] And, after examining the authorities of *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perak and Another Appeal* [2013] 6 MLJ 626, and *Calamas*, this court in *Semenyih Jaya* proceeded to answer the question on the

right of appeal in the affirmative; that the 'proviso to sub-s 49(1) of the Act does not represent a complete bar on all appeals to the Court of Appeal from the High Court on all questions of compensation. Instead the bar to appeal in sub-s 49(1) of the Act is limited to issues of fact on ground of quantum of compensation. Therefore, an aggrieved party has the right of appeal against the decision of the High Court on *questions of law*' — see paras [155] and [225].

[33] Together with its answers to the other questions of law and due to the non-observance of s 40C requiring the opinion of the assessors on compensation to be made in writing and recorded by the judge, the Federal Court in *Semenyih Jaya* found there was a misdirection of the court rendering the decision invalid — see para [189]. The appeal in *Semenyih Jaya* was then allowed and the case was remitted to the High Court for determination of the issues as found by the Federal Court. As for the 'reference case' in *Amitabha Guha,* that was remitted to the Court of Appeal for decision on the appeal in accordance with the determination of the court on the constitutional questions.

QUESTION OF LAW

[34] What then is a question of law properly and validly falling within the terms of the proviso to s 49(1)? What is the meaning and ambit of 'question of law'; should this term be ascribed a largess or generous interpretation; or should it be a stricter narrower construction.

[35] It is material to decide whether any question posed to the Court of Appeal is indeed a question of law as envisaged in *Semenyih Jaya.* We say this because the right of appeal to the Court of Appeal and thence to the Federal Court under Act 486 is governed by s 49 of Act 486. This issue impacts on the jurisdiction of the court, be it the Court of Appeal or the Federal Court.

[36] Appeals to the Federal Court in land references do not require leave to appeal under s 96 of the Courts of Judicature Act 1964 [Act 91] — see *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perak and Another Appeal*. There is no 'sieve mechanism' to ensure that the questions posed before the court are valid questions of law in which case, it is the duty of the Court of Appeal and the Federal Court, as the case may be, to ensure that the appeal is properly before the court before proceeding to determine the substantive appeal. But for these questions of law as reserved in *Semenyih Jaya,* the appeal would be barred by reason of the proviso to s 49(1). We would add, putting aside the constitutionality or vires of s 40D(3), that that would be consistent with the intent of s 40D(3), 'any decision made under this section is final and there shall be no further appeal to a Higher Court on the matter'.

[37] Although the Federal Court in *Semenyih Jaya* decided that there was still a right of appeal from a decision of the High Court on compensation if the appeal was on questions of law, that the bar was 'limited to issues of fact on ground of quantum of compensation', there was, however, no definition or indication as to what may amount to a question of law within the context and purpose of s 49(1), especially its proviso. Certainly, at no time did the Federal Court in *Semenyih Jaya* define or even attempt to define in any manner whatsoever, the meaning to be ascribed to the phrase 'question of law'. And, we must immediately dispel any thoughts harboured to the effect that the six questions of law or even the two constitutional questions posed in *Semenyih Jaya* necessarily fall within the ambit and meaning of question of law as envisaged in para [155] of its decision.

[38] For a start, the issue never arose in *Semenyih Jaya.* Second, and in any case, the six questions of law in *Semenyih Jaya* were framed and were granted leave after having met the requirements of s 96(a) of the Courts of Judicature Act 1964 (Act 91). Those requirements are entirely different; more so where the phrase 'question of law' is actually part of the first question of law posed.

[39] We would add that the Federal Court's answers to any of the questions posed, including the question on loss of profits, do not ipso facto change that conclusion. The Federal Court was merely answering the questions of law as posed and the answers were required so that the High Court may determine the case accordingly. A fortiori, the principles for engaging the court's powers of appellate intervention are also not questions of law; more so for the purpose and in the context of, s 49(1).

[40] Once again, what is a question of law within the context or for the purpose of s 49(1). The answer to this seemingly innocuous question, to some extent, may be found in the reference case that formed part of *Semenyih Jaya;* that is, *Amitabha Guha*. This case found its way back to the Federal Court recently in *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1; [2021] 3 CLJ 1. To avoid confusion, we shall refer to this as 'Amitabha Guha No 2'.

[41] After the Federal Court's decision in *Semenyih Jaya* where the decisions on the constitutional questions were answered and remitted back to the Court of Appeal, the Court of Appeal set aside the decision of the High Court and in turn, remitted the case to the High Court for a rehearing.

[42] After a rehearing, the High Court allowed an excess sum of RM2,411,788.58 over the land adminsitrator's award of RM349,519.32 for the acquisition of two contiguous parcels of commercial land in relation to 'Projek Penyuraian Trafik Jalan Lingkaran Kajang (SILK) — Pembinaan

Persimpangan Bertingkat Berhampiran Plaza Tol Kajang in 1999. In the first round of hearings, the High Court had awarded a total sum of RM1,057,740.98.

[43] From the High Court's decision, the appellants posed eight purported 'questions of law' to the Court of Appeal which were broadly categorised as follows:

(a) question 1 — comparable acquisition issue;

(b) question 2 — category of land use issue;

(c) question 3 — injurious affection for contiguous lots issue;

(d) questions 4 and 5 — meaning of 'possession' issue;

(e) question 6 — retrospective issue;

(f) question 7 — compound interest issue; and

(g) question 8 — costs issue.

[44] At the Court of Appeal, a preliminary objection arose on the propriety of the questions posed, the complaint being that not all the questions posed were questions of law. The Court of Appeal, however, did not rule on the preliminary objection but proceeded to answer all eight questions against the appellants and dismissed the appeal.

[45] Save for the second question on the category of land use issue, the rest of the issues were re-posed for consideration at the Federal Court. Once again, the respondent raised by way of preliminary objection that 'save and except for grounds (3), (4) and (5) relating to payment interest in the appellants' memorandum of appeal, the other grounds relate to compensation and are not questions of law' and that the appellant was precluded from appealing on the issues pursuant to ss 40D and 49(1) of Act 486.

[46] The Federal Court dealt first with the preliminary objection. The court noted that 'the respondent did not appeal against the Court of Appeal's non-decision on their preliminary objection. Be that as it may, unlike other appeals, the avenue of appeals to the Court of Appeal and the Federal Court under the scheme of the LAA 1960 is specifically set out under s 49'.

[47] This court then reemphasised the importance of ensuring that:

> *the appeals must not relate to a decision which comprises an award of compensation: see proviso to sub-s 49(1).* To underscore the finality of decisions on compensation, it is further stipulated that there shall be no further appeal on the matter: see s 40D(3). Insofar as the High Court's decision is a decision on compensation, that there shall

be no appeal to the Court of Appeal is acknowledged by sub s 68(1)(d) of the CJA 1964 which stipulates in clear and unequivocal terms that no appeal shall be brought to the Court of Appeal where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final (see *Semenyih Jaya*, at paras [135]–[139] and [140]–[155]). (Emphasis added.)

[48] The Federal Court in *Amitabha Guha No 2* offered a helpful elucidation of what may amount to a question of law with the Federal Court citing some examples as discussed and formulated from several case authorities:

In a general sense, a question of law is an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts of each individual case. What is a question of law has *also been discussed and formulated in a line of cases:*

(a) questions of law are questions about what the correct legal test is;

(b) questions of mixed law and fact are questions about whether the facts satisfy the legal tests: *Canada (Director of Investigation and Research) v Southam Inc,* [1997] 1 SCR 748;

(c) a question of law is a question concerning the legal effect to be given to a set of undisputed facts. This includes an issue which involves the application or interpretation of a law *(Carrier Lumber Ltd v Joe Martin & Sons Ltd* [2003] BCJ No 1602);

(d) the question of whether a decision-maker has jurisdiction to determine a particular matter is usually considered a question of law reviewable by a Court on a standard or correctness *(Premium Brands Operating GP Inc v Turner Distribution Systems Limited* [2010] BCJ No 349);

(e) questions of law involve errors of law committed by a decision-maker. Errors of law includes the application of the wrong law, or a finding of fact in complete absence of any evidence *(Southern* at [39]; *I-Ntelink Inc v Broadband Communications North Inc* [2017] MBQB 146);

(f) questions where there is a real doubt as to the law on a particular point *(Datuk Syed Kechik Syed Mohamed & Anor v The Board of Trustees of the Sabah Foundation & Ors* [1999] 1 MLJ 257; [1999] 1 CLJ 325);

(g) questions of law includes the correctness of (a) pure statements of law (eg as to the correct interpretation of a statutory provision), and (b) the inferring of a conclusion from the primary facts (where the process of inference involves assumptions as to the legal effect of consequences*of the primary facts)* (*D-G of Inland Revenue v Rakyat Berjaya Sdn Bhd* [1984] 1 MLJ 248 at p 252. (Emphasis added.)

[49] Applying the general proposition that it had just laid out, the Federal Court declined to answer questions 1 and 3 holding that these were not questions of law. After sieving out these questions, the Federal Court then

proceeded to deal with the remaining questions which were properly questions of law. Those questions concerned the issues of possession, retrospectivity, interest and costs.

[50] In this appeal, unlike in *Amitabha Guha No 2,* the issue of the validity of the questions posed in the Court of Appeal are not raised as preliminary objections. These objections form the core of the appellant's complaints. It is thus imperative that the issue of what may properly and validly be described as a question of law is carefully resolved.

[51] As a starting point, we would adopt the general proposition as set down in *Amitabha Guha No 2,* that 'In a general sense, a question of law is an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts of each individual case', but with a strong rider and only to that extent. This general proposition must be appreciated, understood and applied in the context of the proviso to s 49(1), ruled by this court in *Semenyih Jaya* to be a valid provision of law, that s 49(1) limiting the right of appeal does not violate arts 13 and 121(1B) of the Federal Constitution — see paras [165]–[173].

[52] This general proposition also is not to be taken as suggesting, even for the slightest moment, that s 49(1) is to be given a liberal reading so as to render nugatory the clear intent of precluding appeals from decisions of the High Court on compensation. This proposition is not to be read as allowing in any way, what in pith and substance, are appeals on compensation. After all, as explained in *Semenyih Jaya*:

> ... a right of appeal is statutory ... it simply means that when conferred by statute, the right of appeal becomes a vested right. Correspondingly, the jurisdiction of the Court to hear appeals is also conferred by statute (see *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549; [1995] 3 CLJ 485); *Wan Sagar Wan Embong v Harun Taib* [2008] 4 MLJ 473; [2008] 5 CLJ 14).
>
> [150] *A fortiori,* the nature of the appeal depends on the terms of the statute conferring that right. It is a matter of construction to be given to the provisions conferring the right to appeal. Legislative intention can also be found by examining the legislation as a whole. Limiting the right to bring an appeal is a way of encouraging finality. If an examination of the language and policy of the Act granting the right of appeal concludes that Parliament intends to limit an appeal, the court must give effect to it.

[53] There are several reasons why we advocate for such an approach.

[54] Firstly, in coming to that conclusion, as we mentioned, the Federal Court had clearly affirmed the validity and constitutionality of s 49(1). The Federal Court had examined the due process of adjudication under Act 486

and found that by virtue of s 45 and the Third Schedule of Act 486, there was no violation of art 13 of the Federal Constitution. The Federal Court acknowledged that an award of compensation involves two stages of hearings. First, before the Land Administrator and later, at the High Court. At the enquiry before the land adminsitrator, parties are entitled to produce evidence on the valuation of the scheduled land while at the High Court, each party is allowed to bring experts to court to prove their claim on compensation. Although this is through an exchange of affidavits, deponents may be cross-examined. This due process of hearing and decision making on the assessment of compensation ensured adherence of art 13(2) of the Federal Constitution.

[55] Further, the added feature of inclusion of assessors in Act 486 (which was not outlawed in *Semenyih Jaya)* augments and contributes towards that compliance and safeguard. The provisions on assessors were introduced in the same amendments to Act 486 that brought in the proviso to s 49(1) and excluding appeals on compensation. The Court of Appeal in *Hartawan Development Sdn Bhd v Pentadbir Tanah Daerah Melaka* rightly explained that 'whilst precluding the right of appeal against an order of compensation issued by the High Court, there are four new sections introduced by the Land Acquisition (Amendment) Act 1997 which came into force on 1 March 1998. These sections are intended to provide clearer provisions for assessing the value of lands compulsorily acquired. When an objection in regard to compensation is referred to the court, the judge hearing a land reference shall appoint two assessors to assist and aid the judge who inter alia look into the valuation report and/or any expert evidence before coming to a fair compensation. The requirement for the judge to be guided by assessors is warranted as the judge is not an expert in land valuation. Therefore, the opinion of the assessors is deemed necessary'. Assessors are mandatorily provided for in s 40A. See also *Kelana Megah Development Sdn Bhd v Pentadbir Tanah Daerah, Kota Tinggi & Satu Lagi* [2019] 1 MLJ 723.

[56] The Federal Court expressed similar views in *Amitabha Guha No 2* whilst giving its rationale for having two assessors under the amended Act 486; that these assessors are 'trusted to exercise professional integrity in assisting the judge'. The fact that the judge has a choice between the opinions of the government assessor and the private assessor was highlighted to alleviate concerns that the government assessor may give a lower valuation':

> [50] Of course, assessors are not the decision-makers; they only act in an advisory capacity to the judge. As members of the land reference court under the LAA 1960, assessors sit with the judge during and after the hearing, and are required to give non-binding opinions in writing on questions of fact based on the evidence. In land reference proceedings, the provisions of the Third Schedule on Evidence and Procedure in Land Reference Cases shall apply to the proceedings: see s 45(1A) of the LAA 1960. Pursuant thereto, the evidence to be considered by the assessors and

the judge includes the applicant's valuer's report, the respondent's valuer's report, including oral evidence by the applicant's valuer and/or the respondent's valuer during cross-examination and re-examination, if any. The Government assessor and the private assessor hear and consider the evidence and arrive at an opinion on the facts, which is then presented to the judge in the form of a written opinion: see s 40C of the LAA 1960. Even though the assessors are sources of information on matters within their own special skill or knowledge, they are not expert witnesses as their advice does not amount to evidence. More pertinently, the assessors and the judge are required to apply the Principles Relating to the Determination of Compensation under the First Schedule of the LAA 1960: see sub-s 47(2) of the LAA 1960.

[57] A further reason is this — considering that this 'carve-out' exclusion to the express prohibition of appeal is judge-made and is as interpreted by the Federal Court in *Semenyih Jaya* (even then it was really as *per* the question framed), we would strongly caution against giving the phrase 'question of law' a wide or flexible understanding and construct. See *UKM v Attorney General* [2018] SGHCF 18. This qualifier does not appear at all in the plain and unambiguous terms of s 49(1); neither does it exist in the now invalidated s 40D. A narrow and strict construction of s 49(1) was adopted in order to 'give meaning to the constitutional protection of a person's right to his property' — see para [148].

[58] Consistent with that approach, the circumstances and meaning of what may amount to a 'question of law' under the proviso to s 49(1) must also be 'narrowly and strictly construed'; that the definition must not be extensive as it would undermine the clear intent of the proviso to s 49(1) — that there is no right of appeal in respect of decisions comprising an award on compensation.

[59] Next, while according s 49(1) a narrow and strict construction to bring it in line with art 13 of the Federal Constitution and ensure that acquisitions are in accordance with law and that compensation is adequate, in our view, this court in *Semenyih Jaya* had nevertheless expressly recognized and endorsed the approach earlier adopted in *Calamas* — that the amendment to the proviso to s 49(1) is very clear, it is to preclude any party from appealing against the final order of compensation made by the High Court. At para [149], this court expressed the view that 'limiting the right to bring an appeal is a way of encouraging finality. If an examination of the language and policy of the Act granting the right of appeal concludes that Parliament intends to limit an appeal, the Court must give effect to it'. The fact that the Federal Court in *Calamas* did not discuss the constitutionality of s 49 makes no difference to this conclusion.

[60] The facts and decisions in *Calamas* and *Syed Hussain* were examined with the Federal Court in *Semenyih Jaya* concluding that these decisions do not

represent a bar to appeal against any decision of the High Court on compensation; that on the facts, both decisions dealt with appeals against an order of compensation made by the High Court:

> ... It is obvious that the subject matter of the appeals in both cases was purely on the inadequacy of quantum of compensation awarded by the High Court. It was on this basis that Hashim Yussoff [sic] FCJ in *Calamas,* concluded that:
>
> It would appear that from the grounds of judgment of the Court of Appeal (at p 16 appeal record volume I), the issue put forward before the Court was whether the learned Judge was correct in determining the amount of compensation to be awarded to the appellant. (Emphasis added.)
>
> ... I am of the view that the said section clearly stipulates that 'Any decision made under this section is final and there shall be no further appeal to a higher court on the matter.

[61] Yet another reason why a narrow construction must be given to the phrase 'question of law' is that in *Semenyih Jaya,* the specific question of law posed in respect of s 49(1) itself was directed at whether there could nevertheless be an appeal on compensation where it involves a question of law. To this, the Federal Court answered in the affirmative.

[62] Over and above these reasons is the existence of another material aspect to s 49 which may have been overlooked thus far — that there is actually a right to appeal where the decision of the High Court does not comprise an award of compensation. The decision of the High Court may well not comprise an award of compensation but may be in respect of measurement of the scheduled land, the persons to whom compensation is to be paid, or the apportionment of compensation; or the matters set out in s 36(2).

[63] Section 49 confers a right of appeal 'from a decision of the court to the Court of Appeal and to the Federal Court' subject to the terms of its proviso. What the decision of the High Court is depends on the reasons for the reference to the High Court in the first place. Section 49 actually must be read with ss 14, 36, 37 and 47.

[64] Section 14 deals with awards by the land adminsitrator upon conclusion of enquiries held pursuant to s 12. The land adminsitrator is obliged to prepare a written award in the prescribed Form G covering essential details such as the value of the scheduled land acquired; the apportionment of compensation awarded, and whether persons interested in the scheduled land have or have not appeared in the enquiry.

[65] Sections 36 and 37 provide for references to court under Act 486. Under s 36(1), 'no reference to Court under this Act shall be made otherwise than by the land adminsitrator'. However, the reference may be by the land

adminsitrator or by any person interested in the scheduled land. Where it is by the land adminsitrator, it may be where the land adminsitrator is seeking the court's determination on any of the questions as to any of the matters specified in s 36(2)(a)–(2)(f):

> (2) The land adminsitrator may, at any time of his own motion by application in Form M refer to the Court for its determination any question as to —
>
> (a) the true construction or validity or effect of any instrument;
>
> (b) the person entitled to a right or interest in land;
>
> (c) the extent or nature of such right or interest;
>
> (d) the apportionment of compensation for such right or interest;
>
> (e) the persons to whom such compensation is payable;
>
> (f) the costs of any enquiry under this Act and the persons by whom such costs shall be borne.

[66] Where it is by 'any person interested in any scheduled land', it is on that person's application to the land adminsitrator who in turn will refer the application to court for determination. Such person is either one who has not accepted the land adminsitrator's award or who has accepted it under protest and the grounds for objection to the award are those listed in s 37(1)(a)–(1)(d) measurement of the land; the amount of compensation; persons to whom the compensation is payable; the apportionment of the compensation.

[67] Appreciating thus that a reference to the High Court may be on matters other than compensation or the amount of compensation, that the reference may concern the measurement of the scheduled land; persons to whom the compensation is payable; the apportionment of the compensation; or on matters referred by the land adminsitrator under s 36(2), it is clear that the right to appeal in those other respects are preserved and are not affected by the proviso to s 49(1).

[68] This position is further reflected in s 47 where there is a distinctive use of the term 'award' when it refers to compensation:

> 47(1) Every decision made under this Part shall in writing signed by the Judge and the assessors.
>
> (2) *Where such decision comprises an award of compensation* it shall specify —
>
> (a) the amount awarded on account of the market value of the land under paragraph *2(a)* of the First Schedule;
>
> (b) the amount, if any, deducted under paragraph *2(b)* of the First Schedule;
>
> (c) the amounts, if any, respectively awarded under paragraphs 2(c), *(d)* and *(e)* of the First Schedule; and

(d) in respect of each amount, the grounds for ordering or deducting the said amounts. A

(3) Every such written decision or award ...

[69] Consequently, there are many aspects to the right of appeal in s 49, that the prohibition of the right of appeal on compensation is but only one of the many respects. B

[70] We, thus, agree with the general proposition as suggested in *Amitabha Guha No 2* but insofar as the suggestions or examples cited are concerned, those remain purely general suggestions, examples or illustrations and are not indicative of what is a question of law in the limited right of appeal on compensation under s 49(1) or even under Act 486. When properly viewed, those examples or illustrations are more appropriately principles in respect of the exercise of powers of intervention. C D

[71] Before proceeding further, we state that we will disregard any reliance on s 40D(3) since the whole of s 40D was declared unconstitutional and invalidated in *Semenyih Jaya.* After it was invalidated, the provision was only referred to in order to drive home the finality of High Court decisions and the lack of a right of appeal under s 49(1) where the decision comprises an award of compensation. It is unfortunate that following this court's decision in *Semenyih Jaya* in 2017, s 40D though invalidated by the court, has remained in the statute books and has not been deleted so as to avoid confusion, lest it is accidentally applied. This exercise ought to have been undertaken by the relevant agencies, ministries or the Attorney General's Chambers and we urge urgent action in this regard. E F

THE TEN QUESTIONS POSED G

[72] Be that as it may, returning thus to our appeal. With the principles now properly emplaced, we turn now to the questions of law posed at the Court of Appeal. In the instant appeal, ten questions of law were posed in the memorandum of appeal at the Court of Appeal: H

(a) whether the High Court is permitted to use or rely on a government valuation report when it is proven that the report is misleading and failed to disclose material information;

(b) whether the failure to disclose material information in a valuation report prepared in connection with land acquisition cases renders the report unreliable and that consequently such a tainted report ought to be disregarded; I

(c) whether the High Court in a land acquisition case is entitled to embark upon its own assessment of the market value of the land acquired, disregarding the valuation reports prepared by professional valuers and disregarding evidence of comparable sales referred to therein by professional valuers;

(d) whether the High Court erred in law in failing to apply the mean principle when faced with evidence from competent valuers of a range of price a property might fetch in the open market;

(e) whether the High Court erred in law in failing to hold that the respondent's conclusion that Lot 20952 Township of Johor Bahru was not transacted at RM42m but was instead the proceeds of a joint-venture was wrong and that the respondent had thereby disregarded an appropriate comparable on an erroneous assumption;

(f) whether the High Court erred in law in failing to hold that the government valuer had improperly rejected a comparable by the appellant's valuer simply on account that the comparable was not in the immediate vicinity of the subject land;

(g) whether the High Court erred in law in holding that the potential development value of the scheduled land had already been factored into the transacted value of a comparable that had no development potential;

(h) whether the High Court erred in law in concluding that a deduction should be made to the scheduled land because of its larger size on the basis that it would attract lesser potential buyers;

(i) whether the High Court erred in law in holding that the proximity of a closed water treatment plant and a house of worship to the scheduled land is a negative factor that would impact potential buyers when there was no such evidence before the High Court; and

(j) whether the High Court erred in law in failing to order the respondent to refund the deposit to the appellant despite the increase in the award.

[73] These ten questions crystallised into the three main points that we referred to at the commencement of these deliberations; that is, the learned judge had erred in

(a) making a 10% deduction to the market value because of the size of the scheduled land when compared with that of Comparable No 1;

(b) the double counting of 5% for 'location'; 10% for 'access'; and yet another 5% for 'layer' when all are 'three sides of the same pyramid and that separate deductions for similar if not identical characteristics of the scheduled land is a clear instance of double counting that is wrong in law; and

(c) finding that the potential development value of the scheduled land had already been factored into the transacted value of Comparable No 1 when that comparable had no development potential.

These three main points though on compensation, were argued to be questions of law as allowed by *Semenyih Jaya,* to which the Court of Appeal agreed.

[74] The Court of Appeal held that it was inclined to agree with the respondent on the first issue (on the 10% deduction to the market value on account of the size of the scheduled land when compared with that of Comparable No 1) for the following reasons:

(a) there was 'simply no evidence to support the learned judge's finding that the size of the scheduled land would have attracted lesser potential buyers';

(b) 'this finding was contrary to the finding of the appellant's own expert';

(c) it was 'also an error of law as the learned judge appeared not to have applied the proper meaning of market value when he failed to adhere to the valuation concept of a hypothetical sale between a willing buyer and a willing seller';

(d) the learned judge's findings that would be a smaller market for the scheduled land due to its size was arrived at without the benefit of any expert evidence or submission of the parties;

(e) there should have been a proper inquiry into this matter and expert evidence called before a finding is made;

(f) there was thus a denial of procedural fairness as the respondent had been denied the opportunity to be heard;

(g) the size of the land being the basis for a 'negative factor' was never raised at the hearing, neither was it a position taken by the appellant;

(h) even if the assessors, in their expert opinion were of the view that size was a negative factor, it was incumbent on them to allow the respondent the opportunity to deal with the issue failing which there was a clear breach of natural justice;

(i) that the learned judge failed to apply the correct definition of market value;

(j) the 'correct approach was to consider market value of the land from the perspective that there would be hypothetical person actively seeing land to fulfil needs which the scheduled land could fulfil'; and

(k) the cumulative effect is that the decision was one which no reasonable tribunal similarly circumstances would have arrived at the decision that the High Court did.

[75] On the second issue of double counting of 5% for 'location'; 10% for 'access'; and yet another 5% for 'layer', the Court of Appeal again was inclined to agree with the respondent that 'location', 'access' and 'layer' are similar characteristic of the scheduled land and the separate deductions made thereunder amount to double counting that is wrong in law'.

[76] As for the third ground, that an upward adjustment ought to have been made to the base value of Comparable No 1 since that comparable did not have any identical potential for a commercial development unlike the scheduled land which had been granted planning permission. The Court of Appeal found that the learned judge had not made any adjustments because 'he opined that the potentialities development value of the scheduled land had been taken into consideration based on the value of RM5,799.44 per sqmt for Comparable 1'; and this 'non-consideration is a misdirection in law which can be corrected on appeal'. The Court of Appeal then proceeded to make an 'upward adjustment of 25%' for the potentialities development of the scheduled land.

[77] First and foremost, the respondent's appeal at the Court of Appeal was undeniably an appeal on compensation. But for the reservation expressed in *Semenyih Jaya,* that appeal would have fallen squarely within the prohibition in the proviso to s 49(1) and stand barred. However, the respondent successfully invoked the exception or reservation and was able to convince the Court of Appeal that its questions were all questions of law within the understanding of *Semenyih Jaya.*

[78] The issue thus before us is whether the ten questions posed in the memorandum of appeal or the three main points finally argued before and decided by the Court of Appeal are really questions of law, as envisaged in *Semenyih Jaya,* or are they, as suggested by the appellant, disguised attempts to circumvent the statutory bars in s 40D(3) and the proviso to s 49(1) of Act 486.

[79] Having examined all the questions posed, whether we take the ten questions as posed or as grouped into the 'three issues', these questions or issues are all about the award of compensation that was made by the High Court, how the final amount was arrived at and how that amount was wrong. At the end of the day, the High Court, assisted by the assessors, made various deductions in order to arrive at the market value. The High Court, as a Land Reference Court was entitled to make those deductions for the reasons stated, as those deductions are very much fact-based decisions, based on evidence adduced, the analysis of such evidence involving the court's appreciation and impression of such evidence when applying principles of valuation to the facts. Room must be given for a divergence of opinion on the evaluation of such evidence; more so when the appeal is statutorily limited.

[80] The 10% deduction to the market value; double counting due to three separate deductions; and the failure to make an upward adjustment to Comparable 1, are all complaints against the award of compensation, what the learned judge did, what the learned judge should not have done, and what the learned judge ought to have done in order to arrive at the award that the High Court finally did. And, it is really because the respondent was dissatisfied with the amount so awarded that the respondent appealed to the Court of Appeal. The complaints formed the basis or grounds upon which the Court of Appeal was invited to intervene. None of the questions posed is, in any sense, and certainly not in the limited sense of *Semenyih Jaya,* questions of law.

[81] The allegations of acting without evidence or acting against the evidence of a particular witness or report; or how a particular piece of evidence is to be treated, as raised in the questions posed, are actually complaints generally made in order to meet the general principles for appellate intervention. The views expressed by Michael Barnes in *The Law of Compulsory Purchase and Compensation* and by Lord Denning MR in *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 1 WLR 1320, that such complaints are points of law which may be raised on appeal and for which reasons the appellate court may interfere in the trial court's findings, is generally correct in the context and in relation to appeals sans the proviso to s 49(1). But for the clear terms of the proviso, such appeals on points of law may be entertained even if the appeal is on compensation or the amount of compensation. However, in the presence of the plain terms of the proviso, and the restrictive reading which we must give to the meaning of question of law as allowed in *Semenyih Jaya,* such complaints or grounds do not render or make the questions posed, questions of law.

[82] We are of the firm view that the complaints of the respondent essentially concerned issues of fact and/or application of valuation principles when computing the amount of compensation to be awarded for the acquisition. Such issues of fact as well as the application of valuation principles as we have said repeatedly, are not questions of law; certainly not within the narrow and limited remit of what or how such a question of law may be properly and validly taken on appeal under the amended s 49(1).

[83] We agree with the submissions of the appellant that the respondent's complaints relate solely and ultimately to the amount or inadequacy of compensation by reason of the deductions and adjustments made by the learned judge, a methodology and exercise that a High Court judge, sitting as the land reference court is perfectly entitled to undertake in order to determine the market value of the scheduled land. In fact, that is precisely the exercise required of the High Court under Act 486. The market value of any land is not a matter of say so but is subject to proof by evidence and according to the

principles for determining compensation as statutorily provided in the First Schedule to Act 486. Those principles have been carefully prescribed so that adequate compensation under art 13 of the Federal Constitution may be determined.

[84] Paragraph 1(1A) to the First Schedule provides that in assessing the market value of any scheduled land:

> ... the valuer may use any suitable method of valuation to arrive at the market value provided that regard may be had to the prices paid for the recent sales of lands with similar characteristics as the scheduled land which are situated within the vicinity of the scheduled land and with particular consideration being given to the last transaction on the scheduled land within two years from the date with reference to which the scheduled land is to be assessed under subparagraph (1).

[85] In the present appeal, both parties identified the comparison method or approach as the suitable method of valuation. This method, which has been frequently adopted by the parties and approved by the courts, calls for the identification of sale transactions of lands that have characteristics that are most similar or comparable with the scheduled land. No two pieces of land are alike but in determining what would be adequate compensation for the acquisition of the scheduled land, the court has almost always found this comparison method most workable and there is no reason to depart from that time-tested method.

[86] The use of comparison method does not cease upon identification of a comparable sale. In fact, once the most comparable sale transaction or transactions are identified, 'due allowance for all the circumstances' is then made; as opined in *Nanyang Manufacturing Co v The Collector of Land Revenue, Johore* [1954] 1 MLJ 69; or as described in *Yong Nyat Ngo v Superintendent of Lands and Surveys Kuching* [2008] MLJU 276, 'adjustments have to be fair, reasonable and appropriate in the circumstances based on well-established principles such as downward adjustment for larger land and upward adjustment for leases with longer unexpired terms'.

[87] In *Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue Province Wellesley* [1984] 1 MLJ 164 at p 167, a decision which has stood the test of time and which we fully endorse, Mohamed Azmi FJ, speaking for the Federal Court said:

> ... adjustments must be made as to size, time factor and other dissimilarities between the land previously acquired and the subject land.

[88] In explaining how the market value of the scheduled land is computed, another panel of the Federal Court in *Ng Tiou Hong v Collector of Land Revenue, Gombak* [1984] 2 MLJ 35 said:

> ... the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions. Thirdly, ... Fourthly, in considering the nature of the land regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like. Fifthly, ... The safest guide is evidence of sales of similar lands of similar quality in the locality at or prior to the time of acquisition. *The prices paid for such sales can be used as comparables subject to making allowances for all the circumstances.* (Emphasis added.)

[89] We must bear in mind that all the four comparables suggested by the respondent were rejected by the High Court and there is no appeal on that decision. Paragraph 2(1) of the Third Schedule provides that the valuation report of the respondent 'alone must establish a prima facie case for the applicant'. This, however, does not prevent the High Court from using the government valuer's report to determine compensation. In doing so, adjustments for the 'allowances for all the circumstances' must nevertheless be made against Comparable 1 even though it was agreed by the learned judge and the assessors to be the best comparable.

[90] These adjustments for similarities and dissimilarities are part and parcel of the whole process and methodology of determining the market value of the acquired land; and this is precisely what the learned judge assisted by the assessors did at the High Court in this case. Contrary to the Court of Appeal's view, the High Court does not require expert evidence before making the necessary adjustment to Comparable 1 on account of size of the land; and it is undeniable that the size of the scheduled land and Comparable 1 are not the same. Like locality and other characteristics, the size of the land in question is a relevant consideration; the only issue, if at all there is one, is the factor of deduction or increment, as the case may be, to be given. See *Batu Kawan Bhd v Pentadbir Tanah Daerah Seberang Perai Selatan* [1998] 3 MLJ 205; *Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243; *Kenny Heights Devlopment Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur & Anor* [2011] 2 CLJ 912.

[91] Whichever way the factor is treated whether to increase or reduce the comparable market price, this adjustment is ultimately a matter of valuation principle and the High Court, assisted by the two assessors who are licensed valuers, is entitled to make the 10% deduction to Comparable 1 in order to reach an award of adequate compensation. As mentioned before, the appellate court must accommodate a divergence of opinion on the degree or percentage of adjustment which is a normal occurrence in any determination of compensation — see *Bertam Consolidated*. In fact, the respondent's own valuer made adjustments for size — see respondent's valuer's reply to the appellant's

valuer's valuation report and to the land adminsitrator's award at pp 165–169 of the respondent's core bundle.

[92] This process and mechanism of determining the market value and thereby the amount of compensation was somewhat altered with the amendments to Act 486. Assessments in the years before Act 486 was amended to introduce the role of assessors, judges alone determined the market value of acquired land, unaided save for the documentary, oral and any other evidence adduced at the reference proceedings. On appeal from any such decision of the High Court, the function of the Court of Appeal and the Federal Court has been well-laid down by the Privy Council in *Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43 at p 44 and reiterated by the Federal Court in *Bertam,* that the appeals took the form of re-hearings:

> The appeal to the Federal Court under s 49 of the Land Acquisition Act 1960 is like any other civil appeal, by way of re-hearing. The Federal Court is entitled to review the inferences and conclusions of the High Court and to draw its own inferences and conclusions: *Aik Hoe & Co Ltd v Superintendent of Lands and Surveys.* But where the inferences and conclusions of the High Court are based on findings of primary fact which are dependent on the credibility of the oral evidence of witnesses whom the trial judge alone has had the advantage of hearing and seeing, an appellate court ought to accept the High Court's findings of primary fact save in very exceptional cases. Similarly where expert oral evidence of valuers has been called at the trial and discloses a conflict of opinion between them, the judge's findings as to which he regarded as most reliable is entitled to considerable weight thought it is less sacrosanct than his findings of pure fact which are dependent upon his view of whether or not particular witnesses were telling the truth. Finally, their Lordships observe that land valuation inevitably involves an element of appreciation and impression. There is room for divergence of opinion. As in the case of appeals against assessment of damages or against apportionment of blame actions for negligence an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own values unless it is satisfied for good reasons that the judge's assessment must be wrong.

[93] With the introduction of assessors who are professional valuers to ensure that proper determination of adequate compensation under art 13 of the Federal Constitution, and in view of the proviso to s 49(1), we would say that a re-hearing in the terms as described in *Collector of Land Revenue v Alagappa Chettiar* is no longer a necessary feature to appeals on compensation. Allowing questions of law to be posed in appeals on compensation (*Semenyih Jaya*), in our regard, should not mean or entail the same process of re-hearing where the Court of Appeal or the Federal Court 'review the inferences and conclusions of the High Court and to draw its own inferences and conclusions' in relation to valuation; otherwise it would undermine the plain intent of the proviso to s 49(1), render the intent of Parliament meaningless and the courts be accused of rewriting the law.

[94] We note that the complaints are not about the process of assessment or how the assessors had assisted the High Court in determining the compensation to be awarded. The complaints are in substance, about the computation of the award, how deductions were said to be erroneously made or certain factors not taken into account. In our view, all these complaints posed ostensibly as questions of law are really allegations on nothing more but the amount awarded as compensation by the High Court. Such deductions or increases are adjustments generally made in the course of the evaluation exercise for a fair market value for the scheduled land. This is in accordance with s 1(1A) of the First Schedule of Act 486 which the High Court, as the Land Reference Court, must undertake after identifying Comparable 1 of the government valuer's comparables as the 'best comparable to be used for the scheduled land'. The complaints posed through the questions posed at the Court of Appeal are not questions of law.

[95] A comparison with the questions posed in several cases serves to illustrate and fortify our view.

[96] For instance, in *Halaman Perdana Sdn Bhd v Pentadbir Tanah Daerah Hulu Selangor* [2016] 2 MLJ 252; the Court of Appeal rejected the allegations of mis-directions of law in that the High Court had failed to appreciate the development potential of the acquired land; the unjustified preference of the government's valuation and the inadequate consideration of injurious affection. The Court of Appeal instead found that none of these 'factors constitute misdirections of law or give rise to questions of law'; opining that 'These are all factors which affect the quantum or amount of compensation to be paid out to an affected person under the LAA' which are 'not a legal issue nor does it raise any issue of law. The appellant's appeal revolves entirely around the amount of compensation awarded by the court in particular the assessment carried out by the court in arriving at the amount awarded'.

[97] In *Hartawan Development Sdn Bhd v Pentadbir Tanah Daerah Melaka*, the questions posed concerned the basis for compensation, that the award should not have been on the basis that the acquired land was part of estate land; that there was present injurious affection; and that there was no access road to the appellant's other lands as a result of the acquisition. The Court of Appeal held that questions in 'this instant appeal in substance pertains to the alleged inadequacy of compensation awarded by the High Court. Therefore, in essence, the appellant is challenging the award of compensation decided by the assessors'; that the appeal 'was nothing more than an attempt to circumvent the salient provisions of ss 40D and 49(1) of the Act which precludes any party from appealing against the award of compensation'. The appeal was thus dismissed on the ground of want of jurisdiction.

[98] When we examine the facts in *Calamas,* the same may also be said, that the appeal was all about compensation and it was for that reason that the appeal was disallowed.

[99] In *Calamas,* part of the appellant's land was acquired. The land use for the land acquired was categorised as 'agriculture'. Aggrieved by the compensation awarded by the land adminsitrator, the appellant referred the award to the High Court. The High Court, inter alia, increased the amount of compensation in respect of the value of the land but dismissed the claims for loss of a water tank and tarmac road. The appellant appealed unsuccessfully to the Court of Appeal.

[100] The respondent in *Calamas* contended, inter alia, that the appellant was 'precluded from appealing on the quantum of compensation by virtue of the clear terms of section 40D of the Act ...'. Zainun Ali, JCA (as Her Ladyship then was), writing for the Court of Appeal agreed with the respondent, that the issue before the court was 'Whether the learned judge was correct in determining the amount of compensation to be awarded to the appellant'. Her Ladyship drew this conclusion after observing that amongst the main grounds of appeal were the following complaints:

(a) the failure of the High Court judge to give his decision in writing and/or in the form and/or manner as provided under s 47(1) and/or (2) of Act 486;

(b) that the learned judge erred in law and/or in fact when accepting the opinion of the two assessors for not granting the appellant's claim for loss of the water tank and the tarmac road that was built by the appellant on the scheduled law even though there was no valid evidence for such decision to be made resulting in non-compliance of s 2 of the First Schedule to Act 486 (which concerns matters to be considered in determining compensation);

(c) that the learned gudge failed to allow costs under s 51(1)(b) of Act 486; and

(d) that the learned gudge failed to allow interest provided under s 48 of Act 486.

[101] At the Federal Court, the appellant raised two issues, the inadequacy of the quantum of compensation awarded; and the failure to consider s 51(1)(b) of Act 486 on the award of costs. The compensation was seen to be inadequate as the appellant had intended to sub-divide the scheduled land into homestead lots. The application had been approved in principle but the issuance of sub-divided titles was held up due to the acquisition. The appellant argued that the valuation ought to have been by comparison with other homestead lots,

according to s 1, para 1A and s 2 of the First Schedule to Act 486. This, together with several other provisions of Act 486, were alleged to have been ignored by the High Court thus amounting to errors in law warranting correction on appeal.

[102] The Federal Court found from the grounds of judgment that the issue put forward for consideration of the Court of Appeal was 'whether the learned judge was correct in determining the amount of compensation to be awarded to the appellant'. The Federal Court further found that 'most of the points of submission of learned counsel for the appellant before the Court of Appeal also revolved around the amount of compensation, except the issue of non-compliance of s 47 of the Act where the learned High Court judge did not sign the award.' This issue was however abandoned at the Federal Court leaving the single issue of compensation which the Federal Court went on to hold that by virtue of ss 40D(3) and 49(1) of Act 486, 'the appellant is precluded from appealing against the order of compensation issued by the learned trial judge'.

[103] Similarly, the questions rejected in *Amitabha Guha No 2*, namely questions 1 and 3 which were held not to be questions of law:

> Question 1
>
> Whether in accordance with Paragraph 1(1A) of the First Schedule to the LAA 1960, the principle of equivalence and the decision of the Federal Court in *Semenyih Jaya Sdn Bhd v Pentadbit Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 (Semenyih Jaya) the High Court was right to disregard some of the appellant's comparables including the acquisition comparables - that is, the amount of compensation awarded by the land adminsitrator for lands (which were situated within the vicinity of the Acquired Lands) when assessing the market value of the Acquired Lands;
>
> Question 3
>
> Whether the High Court was legally obliged to award injurious affection for all the 4 contiguous lots (adjacent to the Acquired Lands) owned by the appellants in view of the following factors:
>
> (a) injurious affection was awarded for the remainder of the Acquired Lands (owned by the appellants, of which a portion was compulsorily acquired by the respondent under the LAA 1960);
>
> (b) the said 4 contiguous lots suffered from the same negative impact as the remainder of the Acquired Lands and were restricted to only one inadequate access road hence significantly impairing its development potential; and
>
> (c) both assessors awarded injurious affection for the 4 contiguous lots.

[104] According to the Federal Court in *Amitabha Guha No 2,* the 'weight to be given to the acquisition and sale comparables by the learned judge and on

A the other evidence relating to the claim for injurious affection were essentially findings of fact on the evidence'. These questions further 'relate to a decision of the High Court on compensation which decision is final and non-appealable under ss 40D(3) and 49(1) respectively'.

B **[105]** In this appeal, the questions posed at the Court of Appeal cannot pass the litmus test of being proper questions of law; hence ought not to have been allowed by the Court of Appeal.

C **[106]** For the same reasons, the purported question on double counting cannot stand. The respondent had argued that location, access and layer are one and the same, 'three sides of the same pyramid', that separate deductions, which was what the learned judge had done, for each of these factors, amounted to double counting. The learned judge was also said to have been D inconsistent in his understanding and application of deductions based on this principle. The decision in *Teguh Kemajuan Sdn Bhd v Pentadbir Tanah, Daerah Kota Tinggi (Perbadanan Setiausaha Kerajaan Johor (SSI), intervener)* [2018] MLJU 345; [2018] 1 LNS 376 was cited in support.

E **[107]** Once again, we find the question here is not a question of law but an application of valuation principles to the facts. We further agree with the appellant that location, access and layer are different concepts and depending on the factual circumstances, these factors may be treated separately or together — see *Ng Tiou Hong*; *Pentadbir Tanah Daerah Kota Tinggi v Siti Zakiyah bte Sh* F *Abu Bakar & Ors* [2006] 2 MLJ 426. And, in either case, it is not erroneous as it is subject to the findings of fact, how the factors are treated and the degree of deduction.

G **[108]** The facts in *Teguh Kemajuan Sdn Bhd* are also markedly different, underscoring the significance of prevailing factual circumstances. As pointed out by the appellant, the acquired land in *Teguh Kemajuan Sdn Bhd* had entirely different characteristics in relation to location, access, road frontage or layer to warrant the adjustments as made by the learned judge.

H **[109]** We also do not see any distinction when it comes to the complaint concerning the development potential. The learned judge had concluded that no adjustment needed to be made for this factor on the ground that such potential development value had already been factored into the transacted I value of Comparable 1. We cannot see how this complaint amounts to a question of law; at worse, it may be a wrong appreciation of the evidence. However, the evidence shows that the development order upon which the development potential is asserted had lapsed in which case, it is irrelevant.

[110] We must add that the High Court was not obliged to accept wholesale the opinion of the valuers, whether that of the respondent or by the appellant. The High Court is entitled to evaluate the opinions on value given and reach its own decision, as assisted by the assessors. And, in this case, the assessors agreed with the learned judge in disregarding the development potential; making the separate deductions for location, access and layer; and in deducting for size.

CONCLUSION

[111] None of the questions posed by the respondent at the Court of Appeal were real questions of law. We thus unanimously allow the appeal and set aside the decision of the Court of Appeal and restore the decision of the High Court dated 9 August 2018.

[112] My learned brother Mohd Zawawi bin Salleh FCJ and my learned sister Hasnah bt Mohammed Hashim FCJ have read these grounds in draft and have agreed to the same.

Appeal allowed; COA's decision set aside; and decision of the High Court reinstated.

Reported by Ashok Kumar